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No. 265

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

STATE OF MISSOURI ex rel. NORTH AMERICAN COMPANY, a Corporation,
Appellant,
vs.
WILLIAM K. KOERNER, Judge of the Circuit Court of the City of St. Louis,
Appellee.

No. 40,643,
No. 40,644,
No. 40,645.
Consolidated.

APPELLANT'S BRIEF

In Opposition to Appellee's Motion to Dismiss Filed Under Authority of Rule 7, Paragraph 3.

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LIST OF CASES CITED.

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Armour Bros. Banking Co. v. St. Louis National Bank, 113 Mo. 12	3
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St. Louis, B. & M. Ry. v. Taylor, 266 U. S. 200	2
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Statutes Cited.

Constitution of the United States, Sec. 10, Art. I	4
Uniform Stock Transfer Act of Missouri, Sec. 13 (Missouri Laws of 1943, pp. 495 et seq.)	2

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In Opposition to Appellee's Motion to Dismiss Filed Under Authority of Rule 7, Paragraph 3.

We shall notice appellee's points in order.

I.

Appellee asserts:

"This judgment is a construction of the statutory law of Missouri and involves no question of due process of law under the Fourteenth Amendment of the Constitution of the United States."

However, in the Jurisdictional Statement, appellant has set out in detail the manner in which such question was raised at the outset and reiterated throughout the case, including a petition for rehearing. The question is again set out in the Assignments of Error. Appellee takes no notice of these record facts and does not cite any authority to support his assertion.

II.

This is a misapprehension of the settled law.

In *Baudini Co. v. Superior Court*, 284 U. S. 8, 14, Chief Justice Hughes, speaking for the court, said:

> "The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of Sec. 237 (a) of the Judicial Code."

In *St. Louis, B. & M. Ry. v. Taylor*, 266 U. S. 200, and in *Michigan Central Railroad v. Mix*, 278 U. S. 492, denials of a writ of prohibition by the Supreme Court of Missouri were held to be final judgments for purpose of invoking the appellate jurisdiction of the Supreme Court of the United States.

III.

Appellee again ignores the question of the asserted jurisdiction of this court and urges the lack of merit in the case.

The sole question in the case is the validity or invalidity of Section 13 of the Uniform Stock Transfer Act enacted by the Legislature of Missouri in 1943 (Missouri Laws of 1943, pp. 495 et seq.). The five decisions cited by appellee

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can have no bearing on this question for the reason, among others, that such decisions were all made many years prior to 1943, and not one of them had to do with the particular provisions here presented.

Armour Bros. Banking Co. v. St. Louis National Bank, 113 Mo. 12, was decided in 1892.

Richardson v. Busch, 198 Mo. 174, was decided in 1906.

Jellenik v. Huron Copper Mining Co., 177 U. S. 1, was decided in 1900. The court there construed the laws of Michigan and held that under those laws the interest represented by shares of stock was held by the issuing corporation for the benefit of the true owner, and under Michigan statutes shares could be levied on by notice to the issuing corporation just as under the former laws of Missouri. But the Michigan statutes did not provide (as Section 13 of the Uniform Stock Transfer Act of Missouri does) that in case of levy on shares of stock by notice to the issuing corporation, a transfer of the certificate to an innocent purchaser for value without notice of the attachment prior to sale of the shares under execution put an end to the attachment proceeding.

Moreover, the *Jellenik* case no longer represents the law of Michigan. Michigan enacted the Uniform Stock Transfer Act in 1913.

In *Haughey v. Haughey,* 305 Mich. 356, 9 N. W. (2d) 575, the Supreme Court of Michigan said:

> "At common law, certificates of stock were generally held to be merely evidence of the right to participate in the earnings of the corporation and not to embody the shares. The situs of the stock for the purpose of attachment was held to be the domicile of

the corporation issuing the certificate." Citing the *Jellenik* case.

Then the court said:

> "By the provision of the Uniform Stock Transfer Act that 'title to a certificate and to the shares represented thereby' can be transferred by endorsement and delivery, it was clearly intended that a stock certificate embody the shares. In other words, the certificate of stock is the shares of stock. The situs of the shares is the situs of the certificate." (Compare *Disconto-Gesellschaft v. U. S. Steel Co.*, 267 U. S. 22, 28.)

Ownbey v. Morgan, 256 U. S. 94, involved the constitutional validity of the attachment laws of Delaware. The non-resident debtor contended that his right to appear and contest the merits was conditioned upon his giving special bail and that this amounted to a denial of due process. But the case did not involve any question as to the sufficiency of the seizure to confer jurisdiction of the property attached.

Wilson v. Standefer, 184 U. S. 399, presented an issue as to whether or not a statute of Texas violated Section 10, Article 1, of the Constitution of the United States, which forbids a State passing any law impairing the obligation of a contract. The decision is wholly irrelevant here.

IV.

Appellee reasserts that the case "does not involve any question of due process," but the assertion is not supported by any authority, and appellee takes no exceptions to appellant's detailed presentation in the Jurisdictional Statement and in the Assignment of Errors.

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It is submitted the appellee has not adduced any persuasive reason or consideration against the appellate jurisdiction of this court.

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